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**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/005,497	01/12/98	MORANDO	J MJV-108-B

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IM52/0602

EXAMINER

KASTLER, S

ART UNIT	PAPER NUMBER
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1742

DATE MAILED:

06/02/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/005,497**

Applicant(s)  
**Morando**

Examiner  
**Scott Kastler**

Group Art Unit  
**1742**



☒ Responsive to communication(s) filed on May 6, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-36 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-36 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art of the instant disclosure. The admitted prior art of the instant disclosure, as expressed in the "jepson" type preamble of instant claim 1 for example, shows all aspects of the above claim.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure. The admitted prior art of the instant disclosure, as expressed at pages 1-2 of the specification and in the jepson type preambles of claim 1 shows all aspects of the above claims except the placement of the molten metal inlets coaxially or laterally with respect to the flow of gas flowing through the pump or any particular metal lifting passage configuration (tapering of including a convergent/divergent nozzle shape) . However, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time the invention was made because it has been well settled that when, as in the instant case, a prior art apparatus performs substantially the same function in substantially the same manner as that claimed motivation either to shift the location of a component (the molten metal entry ports) or the shape of a component (the metal lifting passage) without any showing that such changes materially affect the operation of the apparatus, would have been modifications obvious to one of ordinary skill in the art at the time the invention was made. See *In re Japikse*, 86 USPQ 70 (shifting component locations) and *In re Dailey*, 149 USPQ 47 (altering the shape or configuration of a component).

### ***Response to Arguments***

6. Applicant's arguments filed 5-6-1999 have been fully considered but they are not persuasive. Firstly, it is noted that applicant has not argued the rejection of claim 13 as anticipated by the admitted prior art of the instant disclosure, accordingly, this rejection has been

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maintained. Applicant has also not specifically argued the rejection of claims 1-36 as obvious over the admitted prior art of the instant disclosure, however, it will be assumed that applicant's arguments regarding the instant claims distinction over Areaux are also applied to the admitted prior art of the instant disclosure. Applicant's arguments regarding the effects achieved through the use of both the specific gas entry location and the configuration of the passage have been noted, but they are not yet sufficient to overcome the instant rejections because these arguments are not properly supported by evidence submitted in proper declarative form showing the asserted new and improved results that arise from the use of the claimed component locations and configurations as oppose by what is shown by the applied prior art. It has been well settled that mere arguments and conclusory statements in the specification cannot be relied upon to establish new or unexpected results. See *In re Wood et al*, 199 USPQ 137. Finally it is also noted that the applicant has yet to supply an abstract of the disclosure on a separate sheet, as required in the office action mailed on 5-6-1999.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (703) 308-2506.

sk

June 1, 1999



SCOTT KASTLER  
PRIMARY EXAMINER  
~~GROUP 1380~~